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14 Attorneys for Defendants

15 Premier Holding Corporation and Randall Letcavage

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18 **SECURITIES AND EXCHANGE**
19 **COMMISSION,**

20 Plaintiff,

21 vs.

22 PREMIER HOLDING CORPORATION, et
23 al.,

24 Defendants.

25 *Case No. 8:18-CV-00813-CJC-KES*

26 Hon. Cormac J. Carney
27 Courtroom 9B

28 **DEFENDANTS PREMIER HOLDING**
CORPORATION AND RANDALL
LETCAVAGE'S ANSWER AND
AFFIRMATIVE DEFENSES TO
COMPLAINT

1 Defendants, Premier Holding Corporation (“Premier”) and Randall Letcavage
2 (“Letcavage”, and together with Premier, “Defendants”), by and through their undersigned
3 counsel, and pursuant to Fed. R. Civ. P. 7 and 8, hereby serve their answer and affirmative
4 defenses to the Complaint filed by plaintiff, Securities and Exchange Commission (“Plaintiff”),
5 and say:

6 **SUMMARY**

7 1. Denied as to Defendants.
8 2. Denied as to Defendants.
9 3. Denied as to Defendants.

10 **VIOLATIONS**

11 4. Denied as to Premier.
12 5. Denied as to Letcavage.
13 6. Defendants are without knowledge as to this allegation.

14 **JURISDICTION AND VENUE**

15 7. This allegation contains a statement of law and no allegations of ultimate fact
16 against Defendants.
17 8. Denied that the original Court (Southern District of New York) had jurisdiction
18 with respect to this lawsuit; however, admitted that the transferred Court (Central District of
19 California) has jurisdiction with respect to this lawsuit.
20 9. Denied that venue was proper in the Southern District of New York.
21 10. Admitted that Defendants engaged in interstate commerce; any and all liability of
22 Defendants is denied.

23 **DEFENDANTS**

24 11. Admitted as to Premier.
25 12. Admitted Letcavage is 60, is the Chairman, President, CEO and prior strategic
26 consultant of Premier. Otherwise denied.
27 13. Defendants are without knowledge.

OTHER RELEVANT PARTIES

2 14. Defendants are without knowledge.

3 15. Defendants are without knowledge.

4 16. Defendants are without knowledge.

5 17. Admitted as to Premier purchasing 80% of TPC. Otherwise denied.

6 18. Defendants are without knowledge.

7 19. Admitted as to WePower Ecolutions being a former wholly-owned subsidiary of

8 Premier. Otherwise denied.

9 20. Defendants are without knowledge.

10 21. Defendants are without knowledge.

FACTS

12 22. Denied as to Letcavage.
13 23. Denied as to Letcavage.
14 24. Defendants are without knowledge.
15 25. Defendants are without knowledge.

The December 2011 Related-Party Transaction: Letcavage Takes Control of Premier and Causes the Company to Buy Purported Assets from Companies He and Individual A Controlled

19 26. Denied as to Defendants.

20 27. Admitted that Premier provided clean energy products and services through its

21 subsidiaries. Otherwise denied.

22 28. Denied as to Defendants.

The January 2013 Money-Losing-Operations-for-Note Swap and Creation of the “\$5 Million Note”

25 29. Denied as to Defendants.
26 30. Denied as to Defendants.
27 31. Denied as to Defendants.
28 32. Denied as to Defendants.

- 1 33. Denied as to Defendants.
- 2 34. Denied as to Defendants.
- 3 35. Denied as to Defendants.
- 4 36. Denied as to Defendants.
- 5 37. Admitted that Premier issued a press release titled "Premier Holding Corp.
- 6 Shareholder Letter" on or about December 27, 2012. Otherwise denied.

7 **Defendant's "Transform a Loss Into a Gain"**

- 8 38. Denied as to Defendants.
- 9 39. Admitted that Premier's Form 10-K for the year ended December 31, 2012 was
- 10 filed with the SEC on April 22, 2013. Otherwise denied.
- 11 40. Denied as to Defendants.
- 12 41. Denied as to Defendants.
- 13 42. Defendants are without knowledge.
- 14 43. Denied as to Letcavage.
- 15 44. Denied as to Defendants.
- 16 45. Denied as to Defendants.
- 17 46. Denied as to Defendants.
- 18 47. Denied as to Defendants.

19 **Disingenuous Origin of the \$869,000 Valuation**

- 20 48. Denied as to Premier.
- 21 49. Denied as to Premier.
- 22 50. Defendants are without knowledge.
- 23 51. Defendants are without knowledge.
- 24 52. Defendants are without knowledge.
- 25 53. Denied as to Letcavage.
- 26 54. Denied as to Letcavage.
- 27 55. Defendants are without knowledge.

1 **The February 2013 TPC Transaction**

2 56. Admitted by Premier.
3 57. Denied as to Defendants.
4 58. Denied as to Premier.

5 **Premier Improperly Accounted for Its TPC Stake**

6 59. Denied as to Premier.
7 60. Denied as to Premier.
8 61. Denied as to Premier.
9 62. Denied as to Premier.
10 63. Denied as to Premier.

11 **The February 2014 Note-for-Stock Swap**

12 64. Admitted that the first payment on the Note was for \$50,000 and was due in
13 December of 2013. Otherwise denied.
14 65. Denied as to Defendants.
15 66. Denied as to Premier.
16 67. Denied as to Defendants.
17 68. Denied as to Defendants.
18 69. Denied as to Defendants.
19 70. Denied as to Defendants.

20 **Premier’s Failure to Make Required Disclosures About Letcavage’s “Perks”**

21 71. This allegation contains a statement of law and no allegations of ultimate fact.
22 72. Admitted by Letcavage that Premier’s 2013 Form 10-K discloses his compensation
23 during the year ended December 31, 2013, directly or through related entities was \$240,000 as
24 compensation for his role as our CEO and CFO, and \$37,500 for consulting, for a total of
25 \$277,500, and \$661,319 for contract labor, including payments to Nexalin Technology specifically
26 for the direct costs related to independent contractors performing sales lead generation (Nexalin
27 Technology is in an unrelated business to Premier, and Mr. Letcavage was its president in 2013),
28 which was not reported as income. Further, the 2013 Form 10-K disclosed that during the year

1 ended December 31, 2013, Premier has paid \$66,287 to iCapital Advisory for consulting services,
2 a related party entity which Mr. Letcavage is the president of. Otherwise denied.

3 73. Denied as to Defendants.

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10B-5 (Premier and Letcavage)

7 74. Defendants restate and reaffirm each and every response to the allegations
8 contained in paragraphs 1-73 above as if fully set forth herein.

75. Denied as to Defendants.

10 76. This allegation contains a statement of law and no allegations of ultimate fact.

SECOND CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act (Premier and Letcavage)

13 77. Defendants restate and reaffirm each and every response to the allegations
14 contained in paragraphs 1-73 above as if fully set forth herein.

15 || 78. Denied as to Defendants.

16 79. This allegation contains a statement of law and no allegations of ultimate fact.

THIRD CLAIM FOR RELIEF

Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act (Premier)

19 80. Premier restates and reaffirms each and every response to the allegations contained
20 in paragraphs 1-73 above as if fully set forth herein.

21 || 81. Denied as to Premier.

22 || 82. Denied as to Premier.

23 83. This allegation contains a statement of law and no allegations of ultimate fact.

FOURTH CLAIM FOR RELIEF

**Violations of Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1,
13a-11, and 13a-13
(Premier)**

27 84. Premier restates and reaffirms each and every response to the allegations contained
28 in paragraphs 1-73 above as if fully set forth herein.

1 85. Denied as to Premier.

2 86. Denied as to Premier.

3 **FIFTH CLAIM FOR RELIEF**

4 **Violation of Section 13(a) of the Exchange Act and Exchange Act Rule13a-14**
(Letcavage)

5 87. Letcavage restates and reaffirms each and every response to the allegations
6 contained in paragraphs 1-73 above as if fully set forth herein.

7 88. This allegation contains a statement of law and no allegations of ultimate fact.

8 89. This allegation contains a statement of law and no allegations of ultimate fact.

9 **SIXTH CLAIM FOR RELIEF**

10 **Violation of Section 13(b)(5) of the Exchange Act and Exchange Act Rule13b2-1**
(Letcavage and Greenblatt)

11 90. Letcavage restates and reaffirms each and every response to the allegations
12 contained in paragraphs 1-73 above as if fully set forth herein.

13 91. Denied as to Letcavage.

14 92. This allegation contains a statement of law and no allegations of ultimate fact.

15 **SEVENTH CLAIM FOR RELIEF**

16 **Control Person Liability for Premier's Violations of Section 10(b)**
of the Exchange Act and Exchange Act Rule 10b-5
(Letcavage)

18 93. Letcavage restates and reaffirms each and every response to the allegations
19 contained in paragraphs 1-73 above as if fully set forth herein.

20 94. Denied as to Defendants.

21 95. This allegation contains a statement of law and no allegations of ultimate fact.

22 96. Denied as to Letcavage.

23 97. Denied as to Letcavage.

24 98. This allegation contains a statement of law and no allegations of ultimate fact.

25 **EIGHTH CLAIM FOR RELIEF**

26 **Control Person Liability for Premier's Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of**
the Exchange Act
(Letcavage)

1 99. Letcavage restates and reaffirms each and every response to the allegations
2 contained in paragraphs 1-73 above as if fully set forth herein.

3 || 100. Denied as to Defendants.

4 || 101. Denied as to Defendants.

5 102. This allegation contains a statement of law and no allegations of ultimate fact.

6 || 103. Denied as to Letcavage.

7 || 104. Denied as to Letcavage.

8 105. This allegation contains a statement of law and no allegations of ultimate fact.

NINTH CLAIM FOR RELIEF

**Control Person Liability for Premier's Violations of Sections 13(a) of the Exchange Act and
Exchange Act Rules 13a-1, 13a-11, and 13a-13
(Letcavage)**

12 106. Letcavage restates and reaffirms each and every response to the allegations
13 contained in paragraphs 1-73 above as if fully set forth herein.

107. Denied as to Defendants.

108. Denied as to Defendants.

16 109. Denied as to Letcavage.

110. Denied as to Letcavage.

111. This allegation contains a statement of law and no allegations of ultimate fact.

TENTH CLAIM FOR RELIEF

**Aiding and Abetting Liability for Premier's Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act
(Letcavage and Greenblatt)**

21 112. Letcavage restates and reaffirms each and every response to the allegations
22 contained in paragraphs 1-73 above as if fully set forth herein.

113. Denied as to Defendants.

114. Denied as to Letcavage.

ELEVENTH CLAIM FOR RELIEF

**Aiding and Abetting Liability for Premier's Violations of Sections 13(b)(2)(A) and
13(B)(2)(B) of the Exchange Act
(Letcavage and Greenblatt)**

1 115. Letcavage restates and reaffirms each and every response to the allegations
2 contained in paragraphs 1-73 above as if fully set forth herein.

3 116. Denied as to Defendants.

4 117. Denied as to Letcavage.

TWELFTH CLAIM FOR RELIEF

**Aiding and Abetting Liability for Premier's Violations of Sections 13(a) of the Exchange Act
and Exchange Act Rules 13a-1, 13a-11, and 13a-13
(Letcavage and Greenblatt)**

8 118. Letcavage restates and reaffirms each and every response to the allegations
9 contained in paragraphs 1-73 above as if fully set forth herein.

119. Denied as to Defendants.

11 120. Denied as to Letcavage.

12 WHEREFORE, Defendants respectfully request the Court enter judgment in their favor
13 and against Plaintiff, and such other and further relief as the Court deems just and proper.

DEFENSES & AFFIRMATIVE DEFENSES

First Defense

17 Defendants did not act with the requisite degree of scienter necessary to create liability as
18 alleged by Plaintiff in its complaint.

Second Defense

20 Plaintiff's complaint improperly groups the Defendants together with others.

Third Defense

22 Plaintiff's complaint fails to allege fraud with sufficient particularity against the
23 Defendants.

Fourth Defense

25 Defendants assert that they reasonably relied upon the misinformation of others; including
26 Anton & Chia and the Valuation Firm.

Fifth Defense

2 To the extent that Plaintiff suffered any damages as alleged in the complaint, such damages
3 were caused, in whole or in part, by the acts and omissions of the other defendants in this action or
4 others.

Sixth Defense

Defendants were not unjustly enriched by their conduct alleged in the complaint, and did not receive any substantial benefit which they would not have received in the absence of such conduct.

Seventh Defense

10 There is no reasonable and substantial likelihood that the Defendants, if not enjoined, will
11 violate securities laws in the future.

Eighth Defense

13 No person or entity suffered any cognizable damages from the conduct of Defendants
14 alleged in the Complaint.

Ninth Defense

16 Defendants have received no ill-gotten gains.

Tenth Defense

18 The relief sought against Defendants in the complaint is grossly disproportionate to the
19 conduct alleged.

First Affirmative Defense

21 Plaintiff's complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

23 Plaintiff's claims against the Defendants are barred by the applicable statutes of
24 limitations.

Third Affirmative Defense

26 Plaintiff is barred from asserting claims in its Complaint by virtue of its failure to include a
27 necessary party to this litigation.

Fourth Affirmative Defense

This Court lacks subject matter jurisdiction.

Fifth Affirmative Defense

4 To the extent that the doctrines of waiver, estoppel, set-off, laches, accord and satisfaction,
5 acquiescence, compromise and settlement, avoidable consequences and/or unclean hands are
6 applicable, the claims in the Complaint and any relief that Plaintiff may otherwise be entitled are
7 barred or limited thereby.

Sixth Affirmative Defense

Defendants reserve the right to amend their affirmative defenses as discovery continues.

11 || DATED: June 22, 2018

Respectfully Submitted

By:

Anthony N. DeMaio

Anthony N. DeMint
Attorneys for Defendants
Premier Holding Corporation and Randall
Letcavage

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

DeMint Law, PLLC
3753 Howard Hughes Parkway, Second Floor Suite 314, Las Vegas, NV 89169
Telephone No. (702) 714-0889

On June 22, 2018, I caused to be served the document entitled **DEFENDANTS PREMIER HOLDING CORPORATION AND RANDALL LETCAVAGE'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT** on all the parties to this action addressed as stated on the attached service list:

8 **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and
9 mailing today following ordinary business practices. I am readily familiar with this agency's
10 practice for collection and processing of correspondence for mailing; such correspondence would
be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

11 **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally
12 deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal
13 Service at Los Angeles, California, with first class postage thereon fully prepaid.

14 **EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly
15 maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with
Express Mail postage paid.

16 **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the
17 addressee as stated on the attached service list.

18 **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United
19 Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility
20 regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

21 **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic
22 mail address as stated on the attached service list.

23 **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF
system, which effects electronic service on counsel who are registered with the CM/ECF system.

24 **FAX:** By transmitting the document by facsimile transmission. The transmission was
25 reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: June 22, 2018

the foregoing is true and correct.



Anthony N. DeMint

Anthony N. DeMint

SEC v. Premier Holding et al.
United States District Court—Central District of California
Case No. 8:18-cv-00813-CJC-KES

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